

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ROBERT GALLEGOS, SR.,

Petitioner,

No. CIV S-04-2741 MCE GGH P

vs.

TOM L. CAREY, Warden,

Respondent.

ORDER

Petitioner, proceeding with appointed counsel, has filed a petition pursuant to 28 U.S.C. §2254. This matter has been set for evidentiary hearing on April 14, 2008, at 9:00 a.m., before the undersigned to resolve the question of whether petitioner can meet his burden to show entitlement to equitable tolling from October, 2002, until October, 2003, based on a claim of mental illness or incompetency. On March 11, 2008, petitioner's counsel filed three proposed writs of habeas corpus ad testificandum, for petitioner and for two other incarcerated individuals, to appear at the hearing.

A writ for petitioner's attendance will issue concurrently with this order; however, as respondent accurately notes in opposition, filed on March 13, 2008, counsel for petitioner has failed altogether to demonstrate what relevant testimony the two additional inmates might have for the upcoming evidentiary hearing. Moreover, the court notes, to the extent that petitioner can

1 show that either inmate might have relevant or necessary testimony, counsel has not made clear
2 why it would be necessary to physically transport these witnesses. That is, should the testimony
3 be deemed relevant and necessary by the court, petitioner must make clear why either or both
4 witnesses could not appear at the hearing by way of videoconferencing.

5 Accordingly, IT IS ORDERED that petitioner provide, within five calendar days,
6 the rationale for the request for petitioner's two proposed inmate witnesses, Arthur Carr #C-
7 66940, California State Prison- Solano, and Leon Pogue #E-65357, Pleasant Valley State Prison,
8 Coalinga, along with informing the court why the proposed additional inmate witnesses could not
9 appear via videoconferencing.

10 DATED: 03/17/08

/s/ Gregory G. Hollows

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GREGORY G. HOLLOWS
12 UNITED STATES MAGISTRATE JUDGE
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